



NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

DANIEL L. BRENNER SENIOR VICE PRESIDENT, LAW & REGULATORY POLICY

1724 MASSACHUSETTS AVE N.W. WASHINGTON, D.C. 20036-1903

TEL: 202.775.3664 FAX: 202.775.3603

**Ex Parte**

July 7, 2005

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: CS Docket No. 98-120**

Dear Ms. Dortch:

On July 7, 2005, Jill Luckett (Senior Vice President, Program Network Policy), Diane Burstein (Deputy General Counsel) of the National Cable & Telecommunications Association (“NCTA”) and I met with Commissioner Kathleen Abernathy and Lauren “Pete” Belvin, Legal Advisor to Commissioner Abernathy. During that meeting, NCTA urged the Commission not to adopt a proposal, dating back to a one-paragraph discussion in the 1998 Notice of Proposed Rulemaking in this Docket, that would provide local broadcast stations with the right to choose mandatory cable carriage of either their digital or their analog broadcast signal (“either/or”) during the transition period.

NCTA argued that providing broadcasters this either/or choice in many cases would effectively grant stations dual carriage rights given the large base of analog television sets in cable customers’ homes. The Commission just five months ago decided that broadcasters should not be granted dual carriage rights, finding that dual must carry was not required by the 1992 Cable Act and would raise serious constitutional problems. Under these circumstances, NCTA maintained that there was no cause for the Commission to revisit this decision. NCTA also demonstrated that providing the either/or choice will not accelerate the digital transition.

Respectfully submitted,

**/s/ Daniel Brenner**

Daniel Brenner

cc: Commissioner Abernathy  
Lauren “Pete” Belvin